PRE-TRIAL MOTIONS

ONTARIO CROWN ATTORNEYS ASSOCIATION

CONTINUING EDUCATION COURSE NO. 1.

M O T I O N S A T T R I A L

(a) Opening Remarks

(b) Amendments

(c) Particulars

(d) Duplicity

(e) Change of Plea

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LECTURE NOTES

MOTIONS AT TRIAL

OPENING REMARKS — QUASH

Gentlemen:

The preparation of this address has given me considerable anxiety. You are all specialists at varying degrees of advancement in your careers.

I have tried to be as complete as possible in the time allotted and yet not be so basic as to insult your experience. I do not intend to enter into philosophical discussions as to what the law should be or where it is going.

My endeavour is to provide you with some principles and cases that will be of some assistance to the prosecution the very next day one of these problems arise in your Court.

The cases cited are, to say the least, Crown-oriented. My topic, you will have noticed, is Motions. I have confined

it strictly to Motions at Trial, a subject I find quite sufficient for our available time and energies.

What we are concerned with today are informations and indictments. What is a good one, what is a defective one, which one is a nullity?

I propose to use the words information and indictment interchangeably for the purposes of this address.

It would be a simple thing to say if the Crown worded the informations properly there would be no successful motions to quash.

It would certainly be a very fatuous thing to say. I have had at least enough experience in prosecuting to understand how little time you have to examine dope sheets, talk to police and defence counsel and do all the other last minute items before Court. It is rare indeed that the information, (usually prepared by the Police) can receive much more than a hurried glance.

When drawing indictments, however, the Crown should of course, examine his preliminary and brief very carefully. You may find the suggested wording at the back of your Martin's to be helpful. Another valuable source of wording charges is Rogers and Magone's Police Officer's Manual 4th edition, edited by W. C. Bowman, Q.C. I suggest you recommend both volumes as well to your local Police and O.P.P.

A study of informations or counts necessarily centers around Sections 510 and 512 of the Code.

Sections 529 and 732 govern the time an attack can be made

upon indictments and informations as well as the methods employed.

In R. v. Leclair (1956) 115 C.C.C. 297, 23 C.R. 216 (Ont.C.A.) an essential averment was omitted in the information, but since accused neglected the provisions of Section 529(1) in objecting before plea (or even during trial) no effect would be given to the objection on appeal.

The Court was of the opinion that the accused was neither misled nor prejudiced.

See R. v. Breland &. George (1964) 3 C.C.C. 370 to the same effect. I would not put my unqualified trust in Sec. 529(1) or 732, however.

The following are some defects for which an information could be quashed:

(a) no offence known to law (does not allege an offence)
(b) outside limitation period
(c) two offences in one count (duplicity)
(d) information unsworn
(e) lack of essential averment
(f) charge arising out of legislation that is ultra vires.

It is suggested that all except the last are defects that would be apparent on the face of the information. An argument can be made that the last should be apparent as well.

An information should have:

(a) a commencement
(b) statement of offence

(c) time
(d) place
(e) conduct
(f) subject matter

It must be good enough so that the accused will know what defence to offer. It must be good enough to support autrefois convict or acquit, at a later date.

For example: An information charging XY with inciting AB to commit an indictable offence would be far too general, (even disregarding requirements of time and place). In Taylor v. Gottfrid 43 C.R. 307 (1964) 2 C.C.C. 382, accused was charged with selling specified quantities of steak and apples at short weight, contrary to the Weights and Measures Act R.S.C. 1952, c. 292, s. 43. The date alleged in the information was December 19. The first notice the accused had of the offence was the service of a summons on March 20 of the following year. The information omitted the name of the purchaser and the price of the goods, contrary to Section 510(3). Accused claimed information insufficient to identify the transaction.

The Magistrate dismissed the information as insufficient. The Manitoba Court of Appeal upheld the dismissal. How much precision is needed? How important is the exact name of the accused (and victim)?

In the Austin case 113 C.C.C. 95, the accused was charged with robbing Emil Savoie. Evidence given of a robbery of Marcel Savoie but not of Emil. No amendment of indictment. An appeal from conviction was allowed. NOTE: This decision has been widely criticized but apparently still stands. However, minor errors in the name of accused persons are not

fatal. We have had several unreported applications to quash lately on this ground.

In June, 1967, Mary Del Duca moved to quash an information and summons since the name therein appeared as De Duca. Donahue, J. dismissed an application for an Order of Prohibition on August 24, 1967. The Court of Appeal upheld the dismissal on December 8, 1967. The result was the same for Hilbert (misnamed as Helbert) Schedewitz.

Fraser, J. on January 17, 1967 said inter alia, ".... the accused would suffer no prejudice if an amendment were made which could be done under S. 732. ..... The correct person was before the Court charged with an offence over which the Magistrate has jurisdiction. ..... The trial will determine whether the proper person is before the Court and whether he committed the offence."

In conclusion, the distinction must be kept in mind between an indictment which is bad in law --- because of the omission of an essential averment and one in which the offence is imperfectly stated.

MOTIONS AT TRIAL

AMENDMENT

My opening remarks on this subject will be negative and amount to this: Avoid amendment if at all possible by the substitution of a new Information. There will be certain instances where this cannot be done but wherever you can, a new Information is far the better course. Throughout this section, I will give you the reasons why I think that a new Information is a better solution than the amendment of an existing Information.

The sections that you will be concerned with on this subject are sections 519, 529, 530, 553, also 711, 712 and 732.

Section 519(1) says that: A count is not objectionable by reason only that

(a) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an indictable offence the matters, acts or omissions charged in the count, or

(b) it is double or multifarious.

I would like to pause here for a moment and comment that this section is very dangerous. It must be read subject to Section 510(1) which says: each count in an Indictment shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the accused committed an indictable offence therein specified.

Section 510(6) says: nothing in this Part relating to matters that do not render a count insufficient shall be deemed to restrict or limit the application of this section.

Section 529(1) says: an objection to an indictment or to a count in an indictment for a defect apparent on the face thereof shall be taken by motion to quash the indictment or count before the accused has pleaded, and thereafter only by leave of the court or judge before whom the trial takes place and a court or judge before whom an objection is taken under this section may, if it is considered necessary, order the indictment or count to be amended to cure the defect. (emphasis added)

(2) a court may, upon the trial of an indictment, amend the indictment or a count thereof or a particular that is furnished under Section 516, to make the indictment, count or particular conform to the evidence, where there appears to be a variance between the evidence and

(a) the charge in a count in the indictment as found; or

(b) the charge in a count in the indictment

(i) as amended or

(ii) as it would have been if it had been amended in conformity with any particular that has been furnished pursuant to Section 516.

N.B. the trial must have begun. Some evidence must have been called otherwise there could not be a variance between the evidence and the charge in the count. R. v. Edgar and Rea (1962) 132 C.C.C. 396.

Section 732 is the section dealing with the Summary Conviction offences and provides that:

(1) An objection to an Information for a defect apparent on its face shall be taken by motion to quash the Information before the Defendant has pleaded, and thereafter only by leave of the summary conviction court before which the trial takes place.

(2) A summary conviction court may, upon the trial of an information, amend the information or a particular that is furnished under Section 729, to make the information or particular conform to the evidence if there appears to be a variance between the evidence and

(a) the charge in the information or

(b) the charge in the information

(i) as amended or

(ii) as it would have been if amended in conformity with any particular that has been furnished pursuant to Section 729.

(3) A summary conviction court may, at any stage of the trial, amend the information as may be necessary if it appears ... inter alia the information fails to state or states defectively anything that is requisite to constitute the offence

(iii) is in any way defective in substance.

This raises the question, When does the trial in fact begin?

There is ancient authority to the effect that the accused must have pleaded and some evidence must be called. Section 732(4) provides that a variance between the information and the evidence taken on the trial is not material with respect to

(a) the time when the offence is alleged to have been committed, if it is proved that the information was laid within the prescribed period of limitation, or

(b) the place where the subject matter of the proceedings is alleged to have arisen, if it is proved that it arose within the

> territorial jurisdiction of the summary conviction court that holds the trial.
> (emphasis added)

There is no parallel to this Section in Section 529.

Section 732 must be read in conjunction with Section 724(1)(b).

We come next to the question, When can amendments be made? To answer this question, we have to consider what type of amendment it is. There are defects in form and defects in substance. The Court has the power to amend a defect in form at any time during the course of the trial but a defect in substance cannot be amended until some evidence is called.
R. v. Peacock (1954) O.W.N. 169
R. v. Edgar and Rea (Supra)

I have two tests that may be of assistance to you in deciding whether the defect is a defect in form or substance. "If the matter pleaded be in itself insufficient, without reference to the manner of pleading it, the defect is substantial but, if the fault is in the manner of alleging it, the defect is formal." Another test as to whether an information is defective in substance, is whether it would support a plea of autre fois convict or acquit.

Can it then be argued by the defence that what we have here is really a new information, one that should be sworn and one which may be outside the time limits for laying such an Information? A further objection would be that the accused is being charge on an Information that has not been pleaded to.

There is an obvious difference in the position of the Crown and the defence here. Since an objection to the Information, for the defence, is only safe before a plea, the Crown at this

stage should reconsider his information or indictment and in a case where there is some question, he should provide a new information rather than amend.

This brings us to the question as to what stage in a trial can an amendment be made. We have already covered the differences between defects of form and substance. There is an English case called R. v. West (1962) C.L.R. 569 in the Court of Criminal Appeal that says the prosecution has a right to amend even at the end of the case, provided there is no prejudice to the accused.

Has the accused been misled or prejudiced in any way? At this stage the Judge may order an adjournment if he feels that that would allow the defence to better prepare, if it claims that it has been taken by surprise.

There is a British Columbia case of R. v. Wixalbrown (1964) 1 C.C.C. 29; 41 C.R. 113. It says the Court of Appeal can amend. It is the decision of the British Columbia Court of Appeal and although the Court of Appeal of Ontario have been invited to follow it on several occasions, they have not demonstrated any eagerness to do so. However, the Supreme Court of Canada recently amended an indictment. Lake v. The Queen (1969) S.C.R. 49, P. 52, Spence J... "The question arises whether this court in dismissing the appeal and confirming the conviction should amend the latter. I am of the opinion it is proper to do so... The Court of Appeal of Ontario has power to amend the conviction by 592(1)(b)(i)." (now 613)

Dealing only with trials there are three stages at which an amendment can be made.

(a) following the closing of the Crown's case

(b) following a motion for dismissal by defence
(c) after the defence has completed the evidence.

In R. v. Powell (1965) C.C.C. 349 the accused was tried on a charge of obtaining a sum of money by false pretences. The Magistrate amended this to read: "cheque" instead of "money" there by conforming with the evidence. This amendment was made after a motion of dismissal by the accused and before the defence called evidence. The appeal was allowed on other grounds but quoting from Judgment of Mr. Justice Bull at page 351,

> "Counsel for the appellant argued vigorously in the Court below and before us, that the procedure by way of Amendment followed by the learned Magistrate below was improper and prejudicial to the accused. Although some confusion and error undoubtedly arose, I consider that the learned Magistrate was entitled to make the amendment he did when he did under the provisions of the said Section 529(2) and that the Appellant's objection thereto is not well founded".

From the decision of Mr. Justice Sheppard,

> "the Magistrate had power to amend under Code Section 529(2) 'to make the amendment, count, ... conform to the evidence' there being a variance between the charge and the evidence. The amendment was made before the accused gave evidence and before the Magistrate delivered the Judgment and it was therefore made while the Magistrate was seized with jurisdiction. There is no requirement under Section 529 that he must amend before motion to dismiss and as the amendment was made before the accused gave evidence, there was no prejudice to him and the amendment was therefore, within R. v. Fiore (1962) 132 C.C.C. 213 (emphasis added)

See R. v. Perreault 78 C.C.C. 236

In R. v. Cantor (1956) O.W.N. 43, the defence had closed its case and the Magistrate refused to allow the Crown to reopen

its case to file a bylaw. The result might have been different if the matter had arisen "ex improviso".

The Cantor case was followed in R. ex Rel Murphy v. Horvath (1961) 132 C.C.C. page 22 at 26, where the learned trial judge is talking about the presiding judge's power to amend.

> "The cases show very clearly that while this discretion may be exercised after the evidence for the Crown has been heard, before the evidence for the defence has been put in, such discretion should not be exercised after the evidence for the defence has been heard and the case has been closed, except where something has come to light ex improviso which by no human ingenuity could have been forseen by the party applying to have the case reopened." (emphasis added)

The test is stated somewhat differently by the late Mr. Justice McLennan in the case of R. v. Huluskiw 133 C.C.C. 244 at 248:

> "it would be unfortunate if the ends of justice were defeated by the inadvertence of counsel in failing to prove what is essentially a matter of form in relation to procedure and provided always that the calling of further evidence, whatever its character is for an honest purpose and that there are no unfair consequences to the opposite party so far as the presentation of that case is concerned. Such was the case in R. v. Perrault (1941) 78 C.C.C. 236, where in a trial of an accused for manslaughter, the Crown through inadvertence failed to prove that the accused was the driver of the car which killed a person and permission was given to the Crown to prove this fact after the Crown had closed its case. No doubt, the burden on the Crown to satisfy the Court that there are no unfair consequences is greater after the defence has closed its case."

This case, of course, goes much further and allowed the Crown to reopen its case after the defence had in fact, closed its case. It should be noted here that the defect complained of was a defect in form.

Section 530 provides that the amended indictment need not be presented to the Grand Jury.

Section 553 provides that:

> Where it is necessary to draw up a formal record in proceedings in which the indictment has been amended, the record shall be drawn up in the form in which the indictment remained after the amendment, without reference to the fact that the indictment was amended.

At this point, I must refer you to an excellent article by G.S.D. Wright, entitled, "The Defective Information Gambit". I am sure most of you are aware of it, but you will find it in Volume I of the Criminal Law Quarterly, page 332 or at page 31 in Notes on Criminal Law by C.C. Savage.

The author points out in that article that objections to an information must be proper and must be specific. They must be specific enough to permit an amendment to be made by the Crown. R. v. Veteran's Transfer (1958) W.W.R. 78 and 120 C.C.C. 30.

The Crown should make a careful study of the preliminary or the dope sheet when drawing indictments. This will reduce the agony of decisions made in the heat of battle at trial. The decision whether or not to amend may be difficult but I stress once again, unless there is a compelling reason to the contrary, a new information should be laid. If the amendment would render a different plea necessary, it should not be made but a new information should of course, be laid or an indictment preferred.

If it is the same transaction, but is wrongly dated for example, an amendment may be made. Similarly, if there is a variance in the place or the township where the offence was

alleged to have been committed (as long as the particular offence, in fact, did occur). A different result obtains when you are faced with the following situation. I take this example from Mr. Savage's book since I have not been able to improve on it. For instance, if "A" was charged with rape on May 1st and the evidence discloses that "A" did have intercourse with the complainant on that day, but that there was consent, but that the evidence also dicloses that he raped the complainant on a later date, here an amendment would not be the proper course but the result should be a new charge. Similarly, in R. v. Cohen 19 C.C.C. 428; 5 D.L.R. 437, here the accused was charged with obtaining money by false pretences. The evidence only established the obtaining of credit; no amendment was allowed. See also R. v. Austin 113 C.C.C. 95; R. v. Duplin 126 C.C.C. 400.

In R. v. Gumble 12 Cox C.C. 248, the indictment charged a theft of 19s.6p. The evidence was that the theft was in the amount of £1. Amendment was permitted by striking out the amount and substituting the word "money".

Amendments have been permitted on trials de novo at County Court. However, once again, if the amendment is one of substance rather than form, there should be some evidence called before such an amendment is made.
R. v. Joy Oil 30 C.R. 132.

We now enter the area where a limitation period may force the amendment of an Information rather than the laying of a new Information. This occurs, of course, in Summary Conviction offences. Generally speaking, an amendment should not be allowed if the effect of it is to substitute an entirely new charge. However, if the effect is merely to supply an allegation to complete the statement of the offence, it is all right.

In Rex v. Ross 94 C.C.C. p. 150, the Ontario Court of Appeal held that in a case where an Information had charged that the accused did "unlawfully drive or cause to be driven a motor vehicle" and this was amended by deleting the words 'or cause to be driven' and re-sworn, and no new summons having been issued, there was no necessity for a new summons to be issued. The accused was convicted by Magistrate Ebbs and appealed his conviction on the ground that the amended Information was a new Information, having been re-sworn on October 15th (the original charge being September 21st) and it was then too late to issue and serve a summons pursuant to Summary Convictions Act, R.S.O. 1937. There was no summons issued on October 15, 1948 with respect to the charge upon which the Respondent was tried and convicted. The Respondent was there, in person, in response to a summons issued and served well within a ten-day limit and to issue a new summons was quite unnecessary. At page 152 of the Report, Robertson, C.J.O. said,

> "Further, in my opinion, it would be quite open to counsel for the prosecution to argue that the amended Information was not to be regarded as the initiation of a new proceeding, notwithstanding it was re-sworn after certain words had been deleted, nor was the procedure adopted equivalent to the laying of a new charge against the Respondent. In substance the proceeding commenced by the laying of an Information on September 23rd, was continued throughout. The Information contained a charge upon which the Respondent was tried and convicted. Certain unnecessary and useless words were stricken out and the Information being on oath, it was properly re-sworn. This amendment of the Information and the re-swearing of it were done in the course of the proceedings on the summons first issued and in the presence of the Respondent and his counsel in attendance in answer to that summons .... On the question of the effect of the amendment to the Information made after the limitation period had elapsed, but where the amendment is not one that amounts to the laying of a new Information, See R. v. Ayer (1908) 14 C.C.C. 210."

The main object of an Information and summons is to secure the attendance of the defendant. After appearance, the charge may be changed subject to the Rules of Procedure.

In regard to re-swearing, where the amendment is one that merely particularizes what is set out, there is no necessity for re-swearing.

In R. v. Rocco 41 C.C.C. (1924) D.L.R. 501, an Information alleged an offence committed on June 12th, but the evidence disclosed the offence was committed on June 13. There was a conviction made for June 13th and there was no amendment. It was held that the equivalent of Section 732(4) cured this defect and no formal amendment was necessary.

In the Manitoba case of Dressler v. Tallman Gravel & Sand Supply found in (1963) 2 C.C.C. 25, the Manitoba Court of Appeal there followed the Ross case (Supra) and quoted at page 31 from the judgment of the Earl of Reading in The King v. Wakeley (1921) King's Bench 688, "we are of the opinion that the amended Information did not charge a different offence to that which was charged in the Information as was originally laid." The Court of Criminal Appeal therefore refused to accede to the argument of accused's counsel that the amendment was ineffective when made after the expiration of a statutory limit for prosecution.

In Regina v. Peacock 108 C.C.C. 129, a decision of the High Court of Ontario, the Honourable Mr. Justice Schroeder (as he then was), held that an amended Information was not the institution of a new proceeding but rather an indication of the election of the prosecutor to proceed on a particular charge.

In the Peacock case the accused was charged that he did drive

on October 16, 1953, without due care and attention or without reasonable consideration for other persons using the highway. The charge came on before the Magistrate on the 2nd of December, 1953. There was a motion to quash. The Crown moved to amend the Information by striking out the words "without due care and attention or".

The Magistrate refused to amend on the ground that he had no power to do so because of the existing section of the Summary Conviction Act that provided that a summons must be issued for a violation within ten days of the alleged violation.

Mr. Justice Schroeder held that the Magistrate could not have concluded that unless he felt that a new summons should be issued and served. He must have regarded the amended Information as the institution of a new proceeding. "In my respectful opinion such a conclusion was erroneous." Mr. Justice Schroeder approved of R. v. Ross (Supra).

Finally, I wish to refer you to the case of The Queen v. Allan Bass and James Bass (1970) 3 C.C.C. 422. This was argued February 14, 1969, in the Court of Appeal of Ontario.

The two accused were originally charged that during the years 1966 and 1967 in the Municipality of Metropolitan Toronto in the County of York, by deceit, falsehood or other fraudulent means, they defrauded the public of a certain amount of money, by submitting fraudulent claims for compensation for damages and injuries received in automobile collisions, contrary to the Criminal Code. Before arraignment and before plea, on the motion of the Crown the indictment was amended as follows: "By deceit, falsehood or other means, defrauded Allstate Insurance Company of Canada, Lumbermen's Mutual Casualty Company, General Accident Assurance Company

British America Assurance Group, Sun Alliance and London Insurance Group, Provincial Insurance Company, Lloyds of London, all being members of the public, or any of them, of a certain amount of money by submitting fraudulent claims for compensation for damages and injuries received in automobile collisions contrary to the Criminal Code".

Ten days of trial ensued and following the evidence of the fraud upon one insurance company objection was raised when evidence was led by the Crown in respect of a second insurance company. After further objection, the trial judge divided the count into seven separate counts. A motion to quash was then brought before Mr. Justice Henderson in the High Court. Mr. Justice Henderson allowed the motion and quashed the indictment in the following judgment.

> "The material before me, the indictment upon which the Grand Jury returned a true bill had one count. The indictment as being tried has seven counts. This by two successive rulings by His Honour Judge Weaver presiding at trial. The jurisdiction of this Court has been questioned to quash at this time. I base my finding that this Court now has jurisdiction at this time of the proceedings against the accused on the basis that the accused should have been given as of right every opportunity of contesting a ruling of the trial judge on anything that arises in the progress of the trial which, if the trial proceeds, would prejudice his defence.
>
> It would appear that the whole procedure of the Grand Jury has been by-passed in this instance. The indictment as now in the Court of General Sessions of the County of York should be quashed."

On appeal by the Crownthe judgment of the Honourable Mr. Justice McKay of the Court of Appeal of Ontario is as follows:

"The first submission of the Crown in this appeal is that while a motion to quash may properly be made to the judge conducting the trial, if the motion is refused that ruling is final and it is not open to the accused to bring a fresh motion to quash before a judge of the Supreme Court; the only remedy open to the accused, if he thinks the trial judge is in error, being if the trial results in a conviction to appeal after the conclusion of the trial.

"While we are of the view that there is merit in this submission of the Crown, because if this procedure were permitted, resulting as it did in this case, in the trial being adjourned and a jury being held until the trial could be continued after the hearing of a motion to quash and this appeal, trials would be needlessly protracted and delayed. We find it unnecessary to make a specific finding on this point in this case as we are all of the opinion that on the merits the appeal must be allowed."

These amendments made at the opening of the trial were merely furnishing of particulars as is provided for by the Code.

The division of the count into separate counts is provided for by Section 500 (now 519) of the Criminal Code which, in part, is as follows:

> 500(1) a count is not objectionable by reason only that
>
> (a) it is double or multifarious....
>
> (2) an accused may at any state of his trial apply to the Court to amend or to divide a count that is
>
> (b) double or multifarious
>
> (3) the court may, where it is satisfied that the ends of justice require it, order that a count be amended or divided into two or more counts."

The judge had ample authority under this section to do what he did and in answer to counsel's submissions that when the counts were divided, the matter should have been referred back to the Grand Jury, Section 530 of the Code provides:

"Where a Grand Jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with Section 510 (now 529), it is not necessary, unless the judge otherwise directs, to present the amended indictment to the Grand Jury, but the indictment, as amended, shall be deemed to be valid in all respects for all purposes of the proceedings as if it had been returned by the Grand Jury in its amended form."

And it is apparent that Section 500(2) [now 519(2)] where it refers to the count being amended at any stage of the trial by division into two or more counts, that this is a matter that can be done without referring the indictments back to the Grand Jury.

We are all of the view that it was within the jurisdiction and discretion of the learned trial judge to permit the amendments that were made at the opening of the trial and to divide the counts as he did later in the trial. The appeal will therefore be allowed, the Order of Mr. Justice Henderson set aside and in place thereof an Order dismissing the application to quash."

MOTIONS AT TRIAL

PARTICULARS

The decision as to when to supply particulars and what particulars to supply relates, of course, to the study of what is a valid information that we considered earlier. An information or indictment must contain a certain minimum of information or it is likely to be quashed.

The Otterbein case (1967) 2 O.R. 87; 50 C.R. 285
(1967) 3 C.C.C. 128
should be required reading when considering matters of particulars. It appears to be in conflict with some of the earlier cases which say, - if the accused fails to ask for particulars at trial, he cannot later attack the conviction on the ground of an omission which might have been cured by particulars.

Hatem v. R. 49 C.C.C. 164
R. v. Trainor 27 C.C.C. 232.

See also R. ex rel White and Fudell 116 C.C.C. 67. Here the man was charged at the scene of the accident. Suppose a man is stopped, how can it be said that he is misled or prejudiced as to the time, place or circumstances? In any event, it seems plain that the Otterbein case would have been decided differently had the accused made an application for particulars and if they had been furnished to him. It seems also implicit in the judgment that had the circumstances been somewhat different, i.e., if it had been some small village rather than the City of Toronto, in which the accused had been charged, that the result might have very well been different.

The two relevant sections under which particulars are supplied are Section 516 in the case of indictable offences and Section 729 in the case of summary conviction cases.

Section 510(3) says "a count shall contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the count." It is my submission that this clearly indicates that the remedy is to apply for particulars under 516 or 729 as the case may be.

The ordinary procedure is that the defence will serve the Crown with the request for particulars and if the request is not met, will then move before the Trial Judge. It is the Judge before whom the trial is pending that makes the order.

An accused is not entitled to particulars as of right. In Ault v. Read 115 C.C.C. 132; 24 C.R. 260, the Magistrate refused to order the prosecution to furnish the particulars. He held that it was not necessary for a fair trial. (It must be assumed he meant in these particular circumstances.)

Where the discretion of the trial judge is not abused, it will not be disturbed by an Appellate Court.

Section 516(3) says: Where a particular is delivered pursuant to this section,

(a) a copy shall be given without charge to the accused or his counsel,

(b) the particular shall be entered in the records, and

(c) the trial shall proceed in all respects as if the indictment had been amended to conform with the particular.

In this respect, I think it is now clear law by the Supreme Court of Canada decision in Cox and Paton v. The Queen (1963) S.C.R. 500; (1963) 2 C.C.C. 148 that the Crown is bound by the particulars furnished.

Quoting from the Judgment of the Honourable Mr. Justice Cartwright, (as he then was), at page 511 of the report,

> "turning now to the grounds on which Miller, C.J.M. dissented, as to the conviction on Count 3, I would first observe that, in my opinion, the appellants are entitled to rely on the particulars given orally by Counsel for the Crown to the same extent as if they had been furnished pursuant to an order made under Section 497 (now s.516) of the Criminal Code. On this point, I agree with the statement of Beck, J. A. in R. v. Carswell (1916) 10 W.W.R. 1027 at 1038. Section 859 (predecessor of Section 497) empowers the trial judge to order particulars. If he does so, it must be clear that the prosecutor is bound by the particulars which he gives in accordance with the order. If without order he gives particulars, he must be equally bound."

I would suggest that after reading the Cox and Paton decision, you also read R. v. Van Hees reported in (1957) O.W.N. at 602; 119 C.C.C. 129, a decision of the Ontario Court of Appeal. Here the accused was charged on or about the 27th day of June, 1957, that he did, contrary to law, steal one 1957 Pontiac, automobile, bearing Ontario Licence No. 560900, valued at $2800, contrary to Section 280 of the Criminal Code of Canada. On Appeal the defence raised the point that since the accused was charged with stealing an automobile with a licence plate bearing the particular number and the evidence did not establish that the motor car which was stolen had affixed to it a licence plate bearing that number, that this was fatal to the charge.

Mr. Justice Schroeder, J.A. at page 606 of the O.W.N. says:

> "Undoubtedly, everything which was essential to be proved by the prosecution must be alleged in the count, but it does not necessarily follow that everything which is alleged must be proved. An unnecessary allegation may be treated as surplusage, if the essential allegations are made and established."

In The King v. Coote (1903) 8 C.C.C. 199, it was held that where the statutory form of indictment was not followed but the indictment contained all the averments which the statute required, the addition of other umecessary averments did not invalidate the indictment although it might not be sufficient at common law. Martin, J., stated at page 204:

> "....after a further consideration of the indictment I have come to the conclusion that an offence is disclosed therein. It contains more than is required by the statute but the essential averments are there and the unnecessary matter may be considered as mere surplusage not invalidating the count."

Archbold's Criminal Pleading, Evidence and Practice 37th Edition at page 369, states that:

> allegations which are not essential to constitute the offence and which may be omitted without affecting the charge or vitiating the indictment do not require proof and may be rejected as surplusage.
> R. v. Barraclough (1906) 1 K.B. 201.

This principle is applied by the Supreme Court of the North-west Territories in The King v. Walker (1906) 12 C.C.C. 197. I quote from the judgment of Mr. Justice Scott at page 200.

> "It was however, contended by Counsel for the defendant, that as it was alleged the entry was forcibly made, the Crown was bound to prove that it was so made. The only actual force shown to have been used was the pushing aside of Baker by the defendant when he entered the building. I am of the opinion that, as the use of actual force was not essential to constitute the offence, the allegation that it was used might be rejected as surplusage and that it was not necessary to prove it." Further

on page 607:

"it cannot be successfully contended that any difficulties created on the ground that the information does not afford proper or sufficient identification of the thing alleged to have been stolen. In the case of a plea of autrefois convict being raised in answer to a subsequent prosecution, full protection would be afforded to the appellant by the provisions of Section 517 (now s.536) of the Criminal Code which read as follows:

517 'Where an issue on a plea of autrefois acquit or autrefois convict is tried, the evidence and adjudication and the notes of the judge and official stenographer on the former trial and the record transmitted to the Court pursuant to Section 462 on the charge that is pending before the court, are admissible in evidence to prove or disprove the identity of the charges.'

"I have come to the conclusion that it was not necessary for the Crown to prove that the motor car stolen by the Appellant bore Licence No. 560900. The motor vehicle in question was abundantly identified not only by the serial number but also by the motor number which corresponded to the identifying numbers appearing on the conditional sales contract and a demonstration agreement filed as exhibits at the trial. The appeal therefore, failed on all grounds and should be dismissed."

I leave it to you Gentlemen, whether or not the Van Hees case is completely overruled by Cox and Paton, particularly in respect to non-vital averments.

Mr. Claude Savage, in his excellent book, Notes on Criminal Law, suggests that whenever particulars are given orally, that they be recorded on the record so that any future disputes as to what was said will be eliminated. There is no authority for ordering particulars of evidence as distinct from particulars of the charge.

When the Crown receives a request for particulars it must first consider, - Is there a valid charge? Particulars

cannot bolster up or complete an invalid count. In case of Bainbridge 30 C.C.C. 214, it was said:

> "there must be a description of the document, the subject of the charge, before particulars can be given further describing it. Particulars will be ordered by the trial judge if necessary for the accused to prepare his defence or procure witnesses."

It might be appropriate to comment here, particularly in charges under Section 33(1)(b) of the Juvenile Delinquents Act, where adults are charged with an act contributing to the delinquency of a juvenile, thatthe specific act, in each case should be described.

In therecent case of Regina v. Chew (1968) 2 C.C.C.; (1968) 1 O.R. 97, a decision of the Ontario Court of Appeal, it was held that in a case of a man charged with an indictable offence, upon which he had an election as to how he wished to be tried and he refused to make such election, there was no jurisdiction in the Magistrate to order the Crown to furnish particulars of the charge at this stage. Mr. Justice Aylesworth, J.A., at page 98 of the report says:

> "the duty of the Magistrate was to proceed with the preliminary inquiry. The accused would not be put in jeopardy unless and until the Magistrate decided to commit him for trial. If, as and when, the committal for trial occurs, then the accused is amply protected under relevant provisions of the Code as to applying, if still considered needful, to the proper forum, either to quash the indictment or to secure particulars thereof before the entry by him of any plea."

The following are two considerations for a trial judge in deciding whether or not to order particulars:

1. are the matters in question already within the knowledge of the accused?
2. consider the preliminary hearing. Does it set out in sufficient detail the matter sought to be made to the subject of particulars?

It is suggested these are valid considerations for the Crown Attorney.

DUPLICITY

Simply put, "duplicity arises when more than one charge is contained in a single count".

R. v. Michalski 39 Cr. App. R. 22

Formulated another way, when more than one offence is found in a single count in an indictment or information, it will render that count bad for duplicity. You will note I didn't use the word void as you see it in some of the cases and texts. The question here is whether or not a count which has in it more than one offence is void or voidable. If it is void, of course, it is then a nullity. If it is voidable, it will stand until attacked and then may be remedied by striking out the words that create more than the one offence.

The sections we are concerned with in this matter are sections 519 and 529, for indictable offences and sections 732 and 724 in the case of summary conviction offences.

Section 519(1) says a count is not objectionable by reason only that

(a) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an indictable offence the matters, acts or omissions charged in the count, or

(b) it is double or multifarious.

As is stated elsewhere in this lecture, this section cannot be read alone but must be read in conjunction with Section 510(1) which says each count in an indictment shall in

general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the accused committed an indictable offence therein specified.

Similarly, section 732 provides that

> (1) an objection to an information for a defect apparent on its face shall be taken by a motion to quash the information before the defendant has pleaded and thereafter only by leave of the summary conviction court before which the trial takes place.

Sec. 731 provides that no information, summons, conviction, order or process shall be deemed to charge two offences or to be uncertain by reason only that it states the alleged offence was committed

> (a) in different modes, or
> (b) in respect of one or another of several articles, either conjunctively or disjunctively.

However, section 724(1) provides that

> "in proceedings to which this part applies, the information .....
> (b) may charge more than one offence or relate to more than one matter of complaint, but where more than one offence is charged or the information relates to more than one matter of complaint, each offence or matter of complaint as the case may be shall be set out in a separate count.

It is clear that if a count in an information or an indictment is bad for duplicity, that this is a defect <u>apparent on its</u> face.

Both sections 529(1) and 732(1) provide that objections for defects apparent on the face of the indictment or information must be taken before plea and thereafter only by leave of the court before which the trial takes place. I would suggest that you should not place a great deal of faith in the efficacy of either of those privative sections since there are numerous cases in which the convictions have been quashed or appealed on the ground of being "bad" for duplicity, following plea and trial as well.

There has been some doubt as to the interaction of Section 519 and 510 as to whether or not it is permissible under certain circumstances to charge more than one offence in a count, the practice of confining a count to one offence should in fairness to the accused be followed unless there are strong reasons for departing from it. I would suggest also that you do not rely upon the words of the enactment creating the offence. Probably the most famous example of this is the case of Archer v. The Queen, where the appellant was charged with having driven a motor vehicle without due care and attention or without reasonable consideration for other persons using the highway. The accused was acquitted by the Magistrate, the Crown appealed, a conviction was entered and an appeal was taken to the Supreme Court of Canada. The citation for the Archer case is (1955) S.C.R. 33; 20 C.R. 181; 110 C.C.C. 321.

It was held that a man may be driving with care and attention so far as his own safety is concerned, yet driving without reasonable consideration for other persons. If a person may do one without the other, it follows as a matter of law with an information which charges him in the alternative is bad.

This case seems to be in direct conflict with the case of

Gatto (1938) S.C.R. 423. There the gist of the offence was assisting or being concerned in smuggling. Louis Gatto and Alphonse Tonellatto were charged under the Customs Act R.S.C. 1927, on an indictment that they did assist or were otherwise concerned in the importing, unshipping, landing or removing or subsequent transporting or in the harbouring of goods liable to forfeiture under the Customs Act, to wit spirituous liquors of a value for duty of over $200.

It seems plain that the rule propounded in the Archer case would not apply in the Gatto case. Surely, the accused could do any one of the things such as unship, land, remove or harbour the goods without doing the others. It was argued for the defence that the indictment was bad for multiplicty and that importing goods of the character to which it relates is one offence, unshipping another offence, landing another offence and removing another offence, transporting another and harbouring still another. Accordingly, the appellants were charged with six offences in the alternative in the one count.

The Supreme Court of Canada agreed with Mr. Justice Doull in the court below where he says,

> "the fallacy in this argument is the appellants were not charged with any one of the offences mentioned. They were charged with the offence created by section 193 of the Customs Act which, leaving out irrelevant matters for the moment, provides that "every person who assists or is otherwise concerned in the importing, unshipping, landing or removing or subsequent transportation or in the harbouring of such goods, (i.e. goods liable to forfeiture under this Act), where the value of the goods so imported and etc., is $200. or over, shall be guilty of an indictable offence and liable to a penalty not exceeding $1000 and not less than $200 or to imprisonment for a term not exceeding four years and not less than one year, or both fine and imprisonment. Section 193 creates

> a substantive offence and guilt of a person charged thereunder depends in no degree whatever upon the fact or otherwise that the Acts in which such person is concerned are themselves offences."

Returning to the Supreme Court of Canada in the Archer case, it was said there that it is an elementary principle that an information must not charge offences in the alternative since the defendant cannot then know with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading autrefois convict.

In Cox and Paton v. The Queen (1963) S.C.R. 500, the two accused were charged in the words of Section 343(1)(a) (now s.358) that they conspired to defraud. The issue for the Supreme Court of Canada was, "Does Section 343(1)(c) of the Criminal Code create more than one offence?" Section 343(1)(a) (now s. 358) reads as follows:

> "everyone who makes circulates or publishes a prospectus, statement or account, whether written or oral, that he knows is false in a material particular, with intent to induce persons, whether ascertained or not to become shareholders or partners in a company.....is guilty of an indictable offence."

It was held that this section creates only one offence, the essence of which is an attempt to induce persons to advance moneys to a company by means of a prospectus known to the accused to be false in a material particular.

The making, circulating or publishing of such a prospectus are not separate offences but are modes in which one offence may be committed.

In the case of R. v. Ball et al reported in (1966) 2 O.R. at 296, the information against Ball read that he on the

3rd day of December, 1965 in the City of London, did have in his possession for the purpose of circulation, obscene written matter, namely magazines, books and obscene motion picture films, contrary to Section 150(1) of the Criminal Code. It was held by the Court of Appeal of Ontario that this information was neither void for duplicity or multiplicity or for being multifarious. An application for leave to appeal to the Supreme Court of Canada on this matter was dismissed.

In the recent case of Fraser Book Bin Ltd. v. The Queen (1967) S.C.R. 38, the information alleged that each of the various accused "unlawfully had in their possession for the purpose of publication, distribution or circulation a quantity of obscene written matter and pictures". Mr. Justice Ritchie at page 43 adopts the language used by Mr. Justice McLean of the British Columbia Court of Appeal where he said,

> "in my view the gravamen of the charge is 'possession'. Once possession is established it only remains for the Crown to lead evidence to prove one of the various purposes for which the possession was had, namely, publication, distribution or circulation. In other words, it is one offence only, which may be committed in different ways. I am fortified in this view by Couture v. The Queen (Supra) where the charge of having in possession for sale, distribution or circulation was regarded as one offence. Duplicity was found in that case only because the full offence charged alleged the accused made printed and had in possession for sale, distribution or circulation."
>
> "Dealing with the second branch of the appellants on duplicity, it is my view that the enumeration of a number of book titles is merely a particularization of the expression 'a quantity of obscene written matter'. In my view, in the circumstances of this case, it was not necessary to make each book or pamphlet the subject of a separate count".

In R. v. Leach 1956 O.W.N. 61; 113 C.C.C. 357, the accused was convicted on an indictment in which the first count was that he did "use, deal with, or act upon or cause Colleen Gladstone to use, deal with, or act upon as if it were genuine..." a forged document. This followed the words of the enactment in Section 311 (now s.326) of the Criminal Code. Held: this was one offence and that there was no duplicity. This case was approved in R. v. Morse Jewellers (1964) 41 Cr. R. 21.

In R. v. Cheng Ton Seng, a decision of the B.C. Court of Appeal, 49 C.C.C. 79, the accused was convicted of an infraction of the Inland Revenue Act. The information was in the words of the section charging that he unlawfully "conceals or keeps, or allows or suffers to be concealed or kept, a wash suitable for the manufacture of spirits". The Court held this was one offence and there was no duplicity.

In R. v. Michaud, 17 C.C.C. 86 at 90, the accused was charged that he did obstruct or interrupt or cause to be interrupted or obstructed the free use of the Temiscouata Railway... by putting or placing or causing to be put or placed on the said railway, certain pieces of iron, iron bolts, horseshoes, rocks or other matter. Once again, this was held to be not void for duplicity.

In R. v. Matspeck Construction (1965) 2 O.R. 730, the accused was charged that they did discharge or deposit or cause or permit the discharge or deposit of material into water or a watercourse which may have impaired the quality of the water. Held: Essence of offence is impairment of water. The other matters merely modes of committing the one offence.

It is to be observed that this does not meet the test in Archer because you can do one without the other. The important question for prosecutors at trial is whether or not an information bad for duplicity, is void or voidable,

and whether it can be remedied. It is submitted that the law in Ontario is R. v. Peacock 108 C.C.C. a decision of Mr. Justice Schroeder in the High Court. This case will be referred to in the section on the amendment but it is sufficient to say at this point that the original charge was bad for duplicity. Mr. Justice Schroeder, as he then was, held it could be amended by striking out the second offence, quoting Edwards v. Jones (1947) 1 K.B. 659 where Lord Goddard said at page 662,

> "if Magistrates find an information preferred which contains two offences and not one, they should take steps to see that it is amended. The way they should do it -- the authorities bear this out -- is by saying to the prosecutor: 'on which offence do you elect to proceed?' Prosecutor can say, 'I elect to proceed upon offence A.', therefore the information should be amended by striking out the second offence charged so that the defendant is called upon to answer to the one offence. On the other hand, if the prosecutor says, 'I decline to elect', then the information is bad. No conviction could take place upon it, because any such conviction would be bad for duplicity. Therefore, Magistrates in those circumstances would say, 'if you will not elect, we dismiss the information because it is bad'."

In the words of Mr. Justice Schroeder, "there is no reason why the same procedure should not be followed in the Courts of Ontario. I am unhesitatingly of the opinion that the information should not have been quashed by the learned Magistrate and that he had power to amend it and should have done so in accordance with the request made by the counsel for the Crown.

In the British Columbia case of R. v. Edgar and Rea, 132 C.C.C. 396; 38 C.R. 110, the accused was charged that he "did loiter or prowl". It was held that this information was bad for duplicity and the Court allowed the Crown to cure it by striking out the words, "or prowl".

In conclusion, I would refer you to an article by Mr. Salhany entitled "Duplicity, is the Rule Still Necessary?" found in Volume 6 of the Criminal Law Quarterly at page 205.

MOTIONS AT TRIAL

CHANGE OF PLEA

As a first step it should be demonstrated, both on the record, and to the Trial Judge that the accused understands:

1. the nature of the charge
2. the meaning of the plea.

It goes without saying that a plea should not be induced. Where a plea of guilty was made by a slip of counsel and there was a good defence available, the Crown should not oppose the withdrawal of a plea of guilty.

R. v. Travers 34 CR 367; 130 C.C.C. 69 (B.C.C.A.)

Section 534 provides, inter alia, an accused who is not charged with an offence punishable by death and is called upon to plead may plead guilty or not guilty or one of the special pleas.

A plea of guilty should be made by the accused, not by Counsel, by virtue of Section 484.

Section 484(4)(b) says:

> the Magistrate shall "call upon the accused to plead to the charge and if the accused does not plead guilty, the Magistrate shall proceed with the trial or fix the time for the trial."

Similarly, a change of plea from "not guilty" to "guilty" must be made by the accused and not counsel.

R. v. Melillo (1963) 3 C.C.C. 95 (Ont. C.A.)

A plea of guilty operates as an admission of all the essential facts necessary to constitute the offence charged.

See R. v. Underhill 114 C.C.C. 320 (N.B.C.A.)

R. v. Doiron 124 C.C.C. (N.B.C.A.)

A plea of guilty does not really involve conclusions of law on behalf of the accused but is an admission that the Crown can prove all the facts necessary to constitute the charge.

The plea, of course, must be unequivocal and unmistakable and should be attended with no qualifications. As stated earlier, the plea can be set aside if it is induced by promise of favour or advantage.

A change of plea may be allowed by the Trial Judge because of demonstrated mistake or misunderstanding. This is not ordinarily reviewable since it is within the Trial Judge's discretion.

Withdrawal of guilty plea is allowable at any time up until judgment. Withdrawal of guilty plea will not be permitted following sentence.

The most common circumstance is the motion to withdraw a plea of guilty; there may be cases that when an accused having pleaded not guilty would apply for leave to enter a special plea or to plead guilty. These remarks apply equally to trials under Part XXIV.

In Kavanagh 114 C.C.C. 378; 22 C.R. 396, the accused was charged with car theft. He pleaded guilty before the Magistrate and was remanded for sentence. When he subsequently appeared for sentence, he asked to have his plea withdrawn on the ground that he was under the influence of drugs when he made it. The Magistrate told him he could not change his plea and proceeded to pass sentence. It was not clear from the record whether the Magistrate was of the opinion he did not have the power to change the plea, in which case he was in error, or if he exercised his discretion to refuse to permit the change of plea. As the former appeared the most likely, the accused should be permitted to change his plea and the conviction was set aside. The Magistrate or Provincial Judge can accept the plea of "not guilty" after conviction but before sentence.

R. v. Koop (1958) O.W.N. 394

In R. v. Hohmann 130 C.C.C. 410; 36 C.R. 257, the accused was charged with wilfully committing mischief to private property. He pleaded guilty and later asked the Judge the meaning of the word "wilfully". The Judge told the Police to instruct him as to the meaning of the word outside the Court. The accused then returned to Court and pleaded guilty. This conviction was quashed on the basis that procedure followed was improper.

There must be solid and substantial grounds to allow a change of plea from "guilty" to "not guilty" and the following three cases may illustrate some of them to a certain extent. In R. v. Bamsey 125 C.C.C. 329, the accused pleaded guilty to a summary conviction offence.

On appeal by way of trial de novo, he applied to withdraw his plea of guilty. His reasons were that the conviction was against the evidence and the weight of evidence. The Court held these grounds were frivolous and refused to allow withdrawal.

In R. v. Dore 125 C.C.C. 194; 30 C.R.281, the accused pleaded guilty to armed robbery. On appeal, he wanted to change his plea saying that he had pleaded guilty because he was told he would go through "faster". It was held that this was insufficient to permit a change of plea.

In R. v. Wood 101 C.C.C. 126 (B.C.S.C.), a juvenile was convicted on a plea of guilty. He applied to withdraw the plea on the basis of a technical defect in the proceedings. It was held that onmia praesumuntur rite esse acta applies and the application was refused.

There are two rules propounded by Mr. Justice Avory, in R. v. Forde 17 Cr. App. R. 99 relating to an appeal from a plea of guilty that may be helpful to the prosecution in deciding whether or not to oppose withdrawal of a plea of guilty.

The rules are these:

a. if the accused did not appreciate the nature of the charge or intend to admit he was guilty of it

b. if on the admitted facts, he could not in law have been convicted of the offence charged.

It is apparent that in any of the above instances, the prosecution should not oppose the withdrawal of the plea of guilty.

The effect of the recent amendments to the Code should also be considered in cases where the accused who had formerly pleaded not guilty and elected trial by a judge and jury or a judge alone, now wishes to change his plea to guilty. Often an accused in these circumstances wishes to re-elect for trial, (or really to plead guilty), by a Provincial Judge.

Prior to the amendments to the Code, the only authority for this were the case of R. v. Fairbairn (1967) 1 C.C.C. 76 and R. v. Cooper (1968) 2 C.C.C. 104 affirmed in the Supreme Court of Canada. These cases permitted an accused who had elected trial by judge and jury or judge alone, to re-elect and plead guilty during the course of his preliminary at any time prior to his committal for trial.

I would observe here, that what could have been done in these situations would have been to lay a new Information, have the accused arraigned and plead to that.

Sections 491 and 492(3) now provide statutory authority for a re-election to a Provincial Judge.

Finally, I would direct your attention to a very important amendment, Section 534(6), which permits an accused who has pleaded not guilty to the offence as charged, to plead

guilty to an included or other offence. I suggest you re-read R. v. Dietrich (No. 1) (1968) 3 C.R.N.S. 361 where a conviction for non-capital murder was quashed. The Indictment charged capital murder but the accused was allowed to plead guilty to non-capital murder without a jury being empanelled. This case was, of course, decided before the enactment of Section 534(6) and I would refer you particularly to the words "Notwithstanding any other provision of this Act"... in Sec. 534(6).

Evans J.A. founded his judgment principally on Sec. 569(1a). I leave it with you as to whether Dietrich (No. 1) is still authority for the proposition that a plea of guilty to non-capital murder must be made before a jury in such circumstances.

The recent case of Fazari (unreported) involved the killing of a Metro Policeman. Fazari was charged with capital murder but pleaded guilty to non-capital murder.

An interesting sidelight in Dietrich indicates it is not fatal to the conviction if the accused does not make the plea personally.

PLEA CASES

Gottselig	114 CCC 333 [Sask. C.A.]
Kavanagh	114 CCC 378 [Ont. C.A.]
Gagne	117 CCC 97 [Alta. C.A.]
Kennedy	117 CCC 117 [BCCA]
Schuh	112 CCC 304 [Alta. Co. Ct.]
Swan	104 CCC 153 [Sask. C.A.]
Sanders	106 CCC 76 [BCCA]
Rapien	108 CCC 198 [Alta. C.A.]
Keddy	114 CCC 352 [NSCA]
Lynch *	116 CCC 333 [Ont. C.A.]
Dennis *	125 CCC 321 [S.C.C.]
Bamsey *	125 CCC 329 [S.C.C.]
Tennen *	125 CCC 336 [S.C.C.]
Thibodeau	[1955] SCR 646 [S.C.C.]
Dore	125 CCC 194 [Que. C.A.]
Bennett	126 CCC 366 [SCBC]
Hand (No. 1)	85 CCC 388 [BCCA]
Milina *	86 CCC 374 [BCCA]
Haines	127 CCC 125 [BCCA]
Thomson	130 CCC 82 [BCCA]
Karas	131 CCC 414 [BCCA]
Veltri	[1963] 3 CCC 145 [S.C. Man.]
Durocher	[1964] 1 CCC 17 [BCCA]
Pace	[1965] 3 CCC 55 [N.S.C.A.]
Wakeling	[1966] 1 CCC 90 [S.C. Sask.]
Brasseau	[1969] S.C.R. 181
Ballageer	[1969] 3 C.C.C. 353
Greenlaw (No. 2)	[1968] 3 C.C.C. 207
Totenham Justices	[1970] 34 Cr. App. R. at 183

EVIDENCE ON PLEA OF GUILTY

Underhill	114 CCC 320 [N.B.C.A.]
Doiron	124 CCC 156 [N.B.C.A.]
Johnson & Creanza	85 CCC 56 [B.C.C.A.]
Hand (No. 1)	85 CCC 388 [B.C.C.A.]
Milina *	86 CCC 374 [B.C.C.A.]
Karas	131 CCC 414 [B.C.C.A.]

ADDITIONAL CASES

MOTION TO QUASH

OBERTSON	(1971) 2 C.C.C. (2d) 416 (O.C.A.)
ORELLI	(1971) 2 C.C.C. (2d) 138 (O.C.A.)
OWRY	(1971) 2 C.C.C. (2d) 39 (M.C.A.)
RANK	(1970) 9 C.R.N.S. 134 (O.H.C.)
COTT	(1970) 9 C.R.N.S. 235 (B.C.S.C.)
OY	(1970) 9 C.R.N.S. 137 (Sask. M.C.)
ALVINO	(1970) 10 C.R.N.S. 118 (A.S.C.)
ATTERSON	(1970) 10 C.R.N.S. 55 (S.C.C.)
ERUBE	(1970) 10 C.R.N.S. 111 (Q.S.P.)
RANK	[1970] 2 C.C.C. 371 (O.H.C.)
NDERSON	[1970] 2 C.C.C. 18 (B.C.S.C.)
AKELLIS	[1970] 2 C.C.C. 377 (O.C.A.)
EASLIP	[1970] 1 C.C.C. 247 (B.C.S.C.)
ALLACE	(1971) 1 C.C.C. (2d) 42 (B.C.C.A.)
ILLER	[1970] 3 C.C.C. 89 (O.H.C.)
BURY	[1970] 4 C.C.C. 379 (B.C.S.C.)
KIDD	[1970] 4 C.C.C. 140 (B.C.S.C.)
SHEETS	[1971] 1 W.W.R. 672 (S.C.C.)
	[1971] S.C.R. 614

DUPLICITY

ETHIER & INSLEY	(1970)	11 C.R.N.S. 222 (O.C.C.)
NORRIS	(1970)	11 C.R.N.S. 360 (B.C.C.C.)
HRISCHUK	(1970)	11 C.R.N.S. 99 (Sask. Q.B.)
ADDISON	[1970]	1 C.C.C. 127 (O.C.A.)
HULAN	[1970]	1 C.CC. 37 (O.C.A.)
MOORE, GRAZIER	(1971)	1 C.C.C. (2d) 521 (B.C.C.A.)
NORRIS	(1971)	1 C.C.C. (2d) 427 (B.C.C.C.)
TAYLOR	(1971)	1 C.C.C. (2d) 322 (M.C.A.)
DNIEPER	[1970]	3 C.C.C. 98 (O.H.C.)
SIMMONS	[1970]	5 C.C.C. 377 (B.C.S.C.)
CANAVAN, BUSBY	[1970]	5 C.C.C. 15 (O.C.A.)

CHANGE OF PLEA

N [1970] 2 C.C.C.C. 293 (N.S.C.C.)

NULLITY

ANDERSON	[1970]	2 C.C.C. 18	(B.C.S.C.)
JONES	(1971)	1 C.C.C. (2d) 232	(B.C.C.A.)
BRIAN	[1970]	3 C.C.C. 130	(B.C.P.C.)
RINNIE	[1970]	3 C.C.C. 218	(A.S.C.-A.D.)
BURTON	[1970]	3 C.C.C. 381	(O.H.C.)
STRUK	[1970]	4 C.C.C. 183	(Sask C.A.)
LIEBERMAN	[1970]	5 C.C.C. 300	(O.C.A.)
BOUCHARD	[1970]	5 C.C.C. 95	(N.B.S.C.-A.D.)
LAYTON	[1970]	5 C.C.C. 260	(B.C.C.A.)

AMENDMENT

RUSH [1970] 2 C.C.C. 30 (O.C.A.)

BELANGER [1970] 2 C.C.C. 206 (S.C.C.)

DENIS [1970] 1 C.C.C. 86 (O.C.A.)

WILDEFONG (1971) 1 C.C.C. (2d) 45 (Sask. C.A.)

ELLIOTT [1970] 3 C.C.C. 233 (O.C.A.)

BASS [1970] 3 C.C.C. 422 (O.C.A.)

BUDOVITCH [1970]4 C.C.C. 156 (N.B.S.C.-A.D.)

MacDOUGALL [1970] 4 C.C.C. 369 (P.E.I.S.C)

ELECTIONS

ISAACS	[1970]	1 C.C.C. 370 (O.C.A.)
CROSS	(1971)	1 C.C.C. (2d) 337 (B.C.S.C.)
RIMMER	[1970]	4 C.C.C. 353 (B.C.C.C.)
ANDERSON	[1971]	3 W.W.R. 200 (B.C.S.C.)
TURNER	[1970]	2 All E.R. 281
	[1970]	1 All E.R. 12
	[1970]	1 All E.R. 1117
	[1971]	2 W.W.R. 716 (B.C.C.A.)
	[1971]	1 All E.R. 81 (Q.B.D.)